



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,455	03/31/2004	Alexander Rzesnitsek	BE-125	6407

7590
Friedrich Kueffner
Suite 910
317 Madison Avenue
New York, NY 10017

08/01/2005

EXAMINER

ASTORINO, MICHAEL C

ART UNIT	PAPER NUMBER
----------	--------------

3736

DATE MAILED: 08/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Tutu

Office Action Summary	Application No.	Applicant(s)	
	10/815,455	RZESNITZEK ET AL.	
	Examiner	Art Unit	
	Michael C. Astorino	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Examiner acknowledges the amendment filed May 23, 2005, wherein claims 1-5 and 7-12 are pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Echerer US Patent Number 5,801,755 A.

Claim 1. Monitoring system for monitoring the progress of neurological diseases, comprising

at least one observation station (*see figure 1, 10 and 100 monitoring stations*) with an electronic camera (*24, 104*) for recording video motion pictures and devices for marking an object field to be covered by the camera,

a storage device for the digital storage of video pictures of a patient (124, video recorder and/or inherent via column 4, lines 63-67 and column 5, lines 1-10 because scanned images of driver's ID are video pictures of a patient which have to be stored before they are transmitted, additionally the video display must store data in some capacity to display it), which are to be recorded at preselected intervals by the camera in the observation station,

Art Unit: 3736

a video display device (26, 28, 106, and 108 displays) for displaying the video picture sequence,

an image processing system (22 and 102, CPU) for processing the video pictures recorded in time intervals to obtain a shortened video picture sequence, and

wherein the system is intended for monitoring a large number of patients who visit the at least one observation station (3) at different times, and wherein the observation station (3) comprises devices (14) for automatic patient identification, and the storage device and image processing system are configured for patient-specific image storage and processing in coordination with identification data. (column 5, lines 2-30)

Claim 2. System in accordance with claim 1, comprising a plurality of observation stations (*figure 1, 10 and inherent that multiple patient stations exist by use of the plural "kiosks" in column 6, lines 49-58*) and a central evaluation center (*figure 1, 100*) spatially separated from the observation stations, wherein the central evaluation center contains the video display device, and is configured to be connected with the observation stations for the purpose of data transmission. (*column 5, lines 40-48*)

Claim 3. System in accordance with claim 2, wherein the central evaluation center consists of a computer (102, CPU).

Claim 4. System in accordance with claim 2, wherein the observation station contains a computer unit (22 CPU) connected to the electronic camera.

Claim 5. System in accordance with claim 4, wherein computer unit is provided for data communication with the central evaluation center (*column 5, lines 40-48*) and contains the storage device and the processing system. (*124, video recorder and/or inherent via column 4, lines 63-67 and column 5, lines 1-10 because scanned images of driver's ID are video pictures of a patient which have to be stored before they are transmitted, additionally the video display must store data in some capacity to display it.*)

Claim 7. System in accordance with any of claim 1, wherein the electronic camera (9) can be controlled by input into the patient identification device (14). Echerer does not state that the electronic camera cannot be controlled by the patient identification device, and it is actually quite likely if the identification is not correct the video system will cease to perform its function.

Claim 10. System in accordance with any of claim 1, further comprising devices for automatic coordination of observation times. (see figure 1, the two stations work simultaneously and are automatically coordinate to work at that time. Additionally, The word "for" in the claim may be properly interpreted as "capable of," and "capable of" does not require that reference actually teach the intended use of the element, but merely that the reference does not make it so it is incapable of performing the intended use.)

Claim 11. System in accordance with claim 1, wherein the image processing system is

Art Unit: 3736

configured to go beyond sequencing to process the recorded images themselves. (Echerer discloses the use of transmitting recorded images (column 5, lines 40-45)

Claim 12 System in accordance with claim 3, wherein the *computer* is a personal computer (102, CPU; a *personal computer* is defined as a computer designed for use by one person at a time by Microsoft Computer Dictionary 5th Edition).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Echerer US Patent Number 5,801,755 A as applied to claim 1 above, and further in view of Reber et al. US Patent Number 5,950,632.

In regards to claim 8, Echerer discloses in column 6, lines 20-28, "a patient with arthritis has seen a doctor and been given a prescription for a pain reliever. The patient wants to have the prescription refilled. The patient goes directly to a pharmacy equipped with the present invention where he contacts the doctor's office. The nurse at that office asks the patient routine questions to obtain the answers the doctor would need in order to authorize a refill of the prescription. The new prescription is sent to the patient by facsimile and he fills it at the pharmacy." However, Echerer does not disclose a programmable signaling device, which is carried by the patient and

Art Unit: 3736

produces signals that remind the patient to take his medication and/or to go to the observation station. However, Reber et al. teaches the use of a pager to activate an alert when a prescribed medication is to be taken (column 4, lines 27-59). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify system of Echerer in view of prescription generating signal of Reber et al., since Echerer teaches administering a prescription to a user and Reber et al. teaches the obvious next step for alerting the user when to take the prescribed medication so the user does not forget to take the medication.

Claim 9. System in accordance with claim 8, further comprising devices (15, 20) for automatic programming of the signaling device on the basis of input data. (see column 2, lines 38-67, and column 3, lines 1-8. Additionally, The word “for” in the claim may be properly interpreted as “capable of,” and “capable of” does not require that reference actually teach the intended use of the element, but merely that the reference does not make it so it is incapable of performing the intended use.)

Response to Arguments

Applicant's arguments filed May 23, 2005 have been fully considered but they are not persuasive. The applicant has argued that the added limitations have made claim 1 allowable, the examiner disagrees with this assertion.

In regards to claim 1, the added limitation states, “wherein the system is intended for monitoring a large number of patients who visit the at least one observation station (3) at different times, and wherein the observation station (3) comprises devices (14) for automatic patient identification, and the storage device and image processing system are configured for

Art Unit: 3736

patient-specific image storage and processing in coordination with identification data.” In regards to the first limitation, “wherein the system is intended for monitoring a large number of patients who visit the at least one observation station (3) at different times,” the intended use of the monitoring system does not add patentable subject matter to the claim. The next limitation “wherein the observation station (3) comprises devices (14) for automatic patient identification,” is also met by Echerer. The word “for” in the claim may be properly interpreted as “capable of,” and “capable of” does not require that reference actually teach the intended use of the element, but merely that the reference does not make it so it is incapable of performing the intended use. Moreover, Echerer does disclose a patient identification means which is automated in column 5, lines 2-30. Lastly, “the storage device and image processing system are configured for patient-specific image storage and processing in coordination with identification data” is met via disclosure in column 5, lines 2-30.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3736

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C Astorino whose telephone number is 571-272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Astorino
July 26, 2005


CHARLES MARMOR
PRIMARY EXAMINER